

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

SEP 16 2005

JOHN F. CORCORAN, CLERK
BY: H McDonald
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

KIRKWOOD D. CABINESS,

Defendant.

CRIMINAL CASE No. 4:02-CR-70031

ORDER AND OPINION

JUDGE NORMAN K. MOON

This matter is currently before the Court on several motions by Defendant. Defendant moves the court to allow him to proceed without cost and to grant him bond pending his appeal of the Court's denial of his Motion to Compel a Rule 35(b) Motion. For the reasons listed below, the Court DENIES Defendant bond, and GRANTS his motion to proceed in forma pauperis.

A party who was permitted to proceed in forma pauperis in a district court action or was found to be financially unable to maintain an adequate defense in a criminal case may proceed on appeal in forma pauperis without further authorization. Fed. R. App. P. 24(a)(3). As Defendant proceeded in forma pauperis in the initial district court action and required a court appointed attorney, he falls within the reach of this rule and his Motion to Proceed on Appeal without Cost is GRANTED..

In the original criminal proceeding in district court, Defendant pled guilty to multiple felony drug charges under sections 841 and 846 of title 21 of the United States Code. Under these

convictions, Defendant is subject to a mandatory minimum prison sentences of five years and ten years. This statute also prohibits the court from suspending this sentence or placing the Defendant on probation or parole. § 841(b)(1)(A); § 841(b)(1)(B). Given the statute's clear requirement that a defendant convicted under it remain in custody for the full period of his or her sentence, Defendant's request for bond is hereby DENIED.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED:

James L. Moore
Judge

9/16/05
Date